

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/boa/**

Case No. A-6710

PETITION OF KEVIN CHAN

OPINION OF THE BOARD

(Public Hearing Date: September 22, 2021)
(Effective Date of Opinion: October 6, 2021)

Case No. A-6710 is an application by Petitioner Kevin Chan for two variances needed for the proposed construction of an accessory structure (shed). The proposed construction requires a variance of 43.10 feet as it is within 16.90 feet of the front lot line. The required setback is sixty (60) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance to be located forward of the rear building line, in accordance with Section 59-4.4.9.B.2.a of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, September 22, 2021. All participation was done via Microsoft Teams. Petitioner Kevin Chan testified in support of the requested variance.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 9, Block 13, Mass Avenue Forest & Adj Par Civil 321320V 38725/480 Subdivision, located 6605 Rannoch Road in Bethesda, Maryland 20817, in the R-60 Zone.
2. The subject property is comprised of a 13,205 square foot primary property (Lot 9, Block 13) and the 2,285 square foot "Lane" that adjoins the primary property's northwest property line, resulting in a six-sided property, 15,490 square feet in size. The subject property is located on the northeast corner of the intersection of Goldsboro and Rannoch Roads, and contains a house that was built in 1950. See Exhibits 3, 4, and 7.

3. The Justification Statement ("Statement") submitted by the Petitioner states that he is seeking to construct an accessory structure (shed) on his property, but is unable to do so in the rear yard, as required by the Zoning Ordinance, "because of fixed extraordinary conditions" of the property. The Statement states that the property's "front yards" on its south and west sides "encroach on and diminish the size of the rear lot where accessory structures must be located," and that "[f]rom a zoning perspective, the property is further complicated by an easement, an overlapping environmental buffer zone, and a 30-foot vertical drop over the span of this sloped property." The Statement explains the complications posed by each of these factors in turn, as well as explaining why required setbacks also preclude construction in the rear yard. It also states that the Petitioner, who purchased the subject property in 2019, "inherited" the property's extraordinary conditions, and "ha[s] not altered the structure of the pre-existing house, grading, landscape, or patio." See Exhibit 3.

4. The Statement at Exhibit 3 asserts that denial of the requested variances would result in no reasonable use of the property for the purposes of Section 59.7.3.2.E.1 of the Zoning Ordinance for the following reasons:

It is practically impossible to erect a 16'x16' foot accessory structure at 6605 Rannoch Road in compliance with §59-4.4.9.B.2 with a minimum 60' front setback that is behind the rear building line because of the following reasons:

1) The Lane is governed by an easement which requires the consent of Ms. Pino and Ms. Duran of 6601 Rannoch Road to erect any permanent structure. A request by the Petitioner to erect a shed in The Lane was made on January 17, 2021 but denied to keep The Lane "unencumbered from anything other than trees".

2) A 5-foot separation is needed between the shed to any foundation or retaining wall (Montgomery County Permitting Services Residential Plan Review). This zone of disturbed soil must remain clear of foundation structures; moreover, it provides room for the safe operation of doors/windows and clearance from the house's eaves. Thus, the shed could not be placed within the pre-existing patio as it would require 26'x26' of space for its safe construction in addition to a 5-foot rear setback; moreover, it is practically difficult to relocate the flagstone patio to a different location on the property.

3) The remainder of the backyard is on a hill where a 4-foot-high pier and post platform is needed for the level installation of the shed. This increases the height of the accessory structure to 16'7" and the side/rear setback to 9 feet (§59-4.4.9.B.2.b) which makes the building area prohibitively tight.

5. The Statement at Exhibit 3 asserts that the topography, shape, and presence of an easement on the subject property make it unique for the purposes of Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

... the property is a reverse corner lot with two front setbacks that impinge on the shape of the rear lot making it smaller in size. The property is topographically steep (30 foot vertical drop) and to create a level ground for construction a raised platform is often needed which can increase the height and setback requirements for an accessory structure. The Petitioner does not have the consent from the residents of 6601 Rannoch Road to erect any permanent structures in the Lane which is governed by an easement.

6. The Statement at Exhibit 3 asserts that the subject property contains environmentally sensitive features or buffers, in satisfaction of Section 59.7.3.2.E.2.a.iii of the Zoning Ordinance:

The south part of the property is occupied by original growth forest within 100 feet of the Minnehaha Creek. It is considered a stream buffer per The Montgomery County Environmental Guidelines (January 2000) where efforts must be made to minimize the cutting of trees and other woody plants.

7. The Statement at Exhibit 3 states that denial of the requested variances would pose a practical difficulty for the Petitioner, and explains that the proposed location for the shed was selected to minimize the variances needed and the impact of the proposed development, as follows:

... The Petitioner proposes to build the shed towards the rear of the front yard per survey plat-6605 Rannoch rd. This location optimally balances several factors by minimizing the required zoning variances, reducing the environmental impact on the adjacent Minnehaha Creek, satisfying the easement, avoiding overhanging power lines, and decreasing the visibility of the structure to neighbors and at the street level.

The proposed shed will serve for storage and a wood working area for the Petitioner who builds fine furniture for a hobby. The 16' x 16' shed dimension provides a 22' diagonal length which is the minimum space needed to safely accommodate end-to-end rip cuts of standard 8-foot hardwood boards through a table saw. The shed's length could not exceed 16' because The Potomac Electric Power Company recommends a 10' clearance from the power line in the front yard. See "survey plat-6605 Rannoch rd" for further details.

As discussed above, it is not suitable to construct a shed in the rear of the house under Montgomery County Zoning Ordinance because of the steep topography, an easement, and narrow space that cannot accommodate the safe construction and operation of 16'x16' shed. Thus, a variance is needed to overcome §59-4.4.9.B.2a. Building the shed towards the rear of the front yard is the best option because the land is relatively flat here, the area does not disturb the trees in the Minnehaha Creek stream buffer, and the shed will be minimally visible from the abundance of screening trees and vegetation. Thus, a dimensional variance of 48' is needed to overcome the minimum front setback standard of 60 feet (§59-4.4.9.B.2) as the shed is 12' of the front lot line.

8. The Statement at Exhibit 3 states that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan, including its Areawide Plan for the Palisades-Western BCC portion of the Master Plan area, explaining that:

The proposed project will maintain the low to moderate density single-family residential use of the property in conformance with the Bethesda Chevy Chase Master Plan.

The variance also conforms with the General Plan of the Palisades-Western Bethesda Chevy Chase which emphasizes the preservation of steeply sloped and wooded topographic nature of the area. The proposed shed is strategically located to avoid the "steep slopes" on the property and will not disturb mature trees that provide shelter for wildlife and prevent soil erosion

9. With respect to the impact of the proposed accessory structure on neighboring property owners, the Statement at Exhibit 3 states that the structure will not be visible to the abutting neighbor to right of the subject property (6595 Rannoch Road), and will respect the wishes of and be minimally visible to the abutting neighbor to the left (6501 Rannoch Road), as follows:

The shed will be in a heavily treed area such that it will be minimally viewable from outside the property. The vicinity of the shed has 100% tree canopy cover per 2018 Montgomery County Tree Canopy Explorer (see Figure 3). The shed will be out of view from the residents of 6595 Rannoch Road. The Petitioner has spoken with the residents of 6595 Rannoch Road who support the proposed location for the shed because it will not be in their view.

It will honor the desires of 6501 Rannoch Road to keep The Lane and surrounding area unencumbered by accessory structures and the shed will be minimally visible because it is located distant and oblique to the 6501 Rannoch Road residence; furthermore, the shed will be screened by a privacy fence surrounding 6501 Rannoch Road, the house of the Petitioner, and the many trees/bushes located on the property.

10. At the hearing, Petitioner Kevin Chan testified that he and his wife purchased the subject property in 2019, and have not made any material changes to it. He testified that the property includes a separate parcel, referred to as The Lane, that previous owners of the subject property had claimed after it was formally abandoned. Mr. Chan testified that The Lane is governed by an easement that does not permit the installation of permanent structures without the permission of his neighbors at 6501 Rannoch Road. He testified that he had approached those neighbors to obtain permission to construct the proposed shed in that area, but that his neighbors did not consent.

Mr. Chan testified that Figure 1 included in his Justification Statement was marked up by a DPS employee to show the property's front, side, and rear yards, as well as to mark the retaining wall in the rear. See Exhibit 3. He testified that the proposed shed could not be located in the center or northeast corner of the rear yard because there is not enough space, testifying that in addition to meeting the required setbacks, the proposed construction needs to be at least five (5) feet away from the house and retaining wall.

Mr. Chan testified that the Site Plan in the record at Exhibit 4 shows the proposed location of the shed. He testified that this is the "optimal location" for a number of reasons. First, he testified that this is a flatter area of the property, noting that the subject property is steep, with a drop of about 30 feet, and that construction in other areas would necessitate use of a platform that would increase the height of the structure. Second, Mr. Chan testified that the selected location protects the existing trees, including those on the south side of the property in the Minnehaha Creek stream buffer. Mr. Chan directed the Board's attention to Figure 2 in his Statement, a photograph taken from the southwest corner of the property, that he stated shows the heavy forestation on the southern side of the property. He noted that the beech trees shown on the Site Plan are original growth trees. Finally, Mr. Chan testified that the selected location would be minimally visible, citing the abundance of tree cover and the other reasons set forth in the Statement.

Mr. Chan testified that Montgomery County owns the land and creek between the south side of his property and Goldsboro Road. In response to Board questions, he testified that the proposed location would pose minimal disturbance to his neighbors, stating that his neighbors to the east, whose house is close to the shared property line, did not want the shed close to that line because it would block their view, and that his neighbors to the north did not want the shed in The Lane in order to preserve its vegetation and the screening effect of that vegetation on their view. In response to a Board question asking why the shed could not be moved closer to the front (south) side of the house, just south of the flagstone patio on that side of the house, Mr. Chan testified that there was a second retaining wall there, which he reminded the Board requires a five (5) foot clearance, and power lines, which require a ten (10) foot clearance. He annotated Exhibit 4 to show the location of this retaining wall and the power lines, and agreed to submit a copy of the annotated Site Plan for the record.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property has an unusual shape, steep topography, and an easement which combine to create an extraordinary condition unique to this property that limits the area available for the construction of the proposed accessory structure behind the rear building line of the existing house, in satisfaction of this element of the variance test. In support of this, the Board finds, per the Statement and the testimony of Mr. Chan, that the existing patio area cannot be used because it is not large enough to accommodate the distance required between the proposed structure and the foundation of the house and retaining wall. In addition, the Board finds, again in accordance with the Statement, that the area behind the patio cannot be used because its steep slope would necessitate the use of four (4) foot piers to provide a level platform for the proposed accessory structure, increasing its height to 16 feet, seven inches (16' 7") and thus triggering the imposition of larger setbacks that cannot be accommodated in the space available. Finally, the Board finds that the portion of "The Lane" that might otherwise be available for the proposed construction cannot be used because of an existing easement over that portion of the property.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner purchased the subject property in 2019, and is not responsible for its shape or topography, and further finds, based on the testimony of the Petitioner, that the existing easement was put in place in connection with the original abandonment of "The Lane," in satisfaction of this Section.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the property's steep topography, limited space behind the rear building line due to its unusual shape and retaining wall, and existing easement combine limit the Petitioner's ability to locate the proposed accessory structure in accordance with the development standards set forth in the Zoning Ordinance, causing the Petitioner a practical difficulty, as explained in his Statement and testimony, recounted above. The Board further finds, in accordance with the Statement, that the requested variances are the minimum needed to overcome this practical difficulty and to allow the proposed construction to proceed while satisfying the easement, decreasing the visibility of the proposed structure, and reducing the environmental impact of the proposed construction on the existing tree cover and buffer for the adjacent creek. Thus the Board finds that this element of the variance test is satisfied.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that construction of the proposed accessory structure will continue the residential use of the home and will respect the slopes and other natural elements of the property, as indicated in the Statement and recounted herein, and thus finds that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan, in satisfaction of this element of the variance test.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, per the Statement, that the proposed accessory structure "will be in a heavily treed area such that it will be minimally viewable from outside the property" due to "abundance of screening trees and vegetation" and other visual obstructions. The Board further finds, based on the Statement, that the proposed accessory structure is "strategically located" to avoid the property's steep slopes, and that its construction "will not disturb mature trees." The Board notes that the Petitioner has spoken with his neighbors to the east and to the north, and has attempted to respect their wishes in locating the proposed shed. Finally, the Board observes that despite proper posting of the subject property, the record contains no objections to the grant of the requested variances. In light of the foregoing, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.


Accordingly, the requested variances needed to allow construction of the proposed accessory structure are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(c).

The Board requests that the Petitioner submit for the record a topographical map showing the slope of his property, as well as the annotated version of the Site Plan, marked by the Petitioner during the hearing, which shows the location of the power lines and retaining wall in the property's front yard.

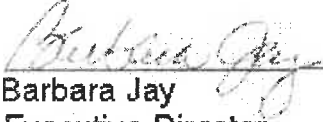
Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Richard Melnick in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of October, 2021.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.